

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition :
of :
WORCESTER CREAMERIES CORP. :
for redetermination of deficiency :
of franchise tax under Article 9-A :
of the tax law for the fiscal :
year ended 3/31/72. :

The taxpayer filed a petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the FYE 3/31/72 and waived a hearing in the matter. Based on the entire information on file, it is hereby found:

(1) Worcester Creameries Corp. operates a milk receiving station in Otsego, New York. The taxpayer purchases raw milk from farmers in the region, weighs it for butterfat content, tests it for bacterial count and cools it. After cooling, the milk is stored in insulated holding tubs which also agitate the milk to prevent the natural rising of the butterfat. The raw milk is then sold to other dealers who utilize it in various ways. It may be pasteurized and packaged as milk, or converted into cream, skim milk and various other products.

(2) The taxpayer purchased machinery and equipment and made plant improvements in the aggregate amount of \$35,963.00 for the FYE 3/31/72 and claimed an investment tax credit thereon of 1% or \$359.63. The Corporation Tax Bureau disallowed the investment tax credit and issued a statement of

audit adjustment and notice of deficiency in the amount of \$359.63.

(3) Section 210.12(b) of the tax law reads in part:

"A credit shall be allowed . . . with respect to tangible property and other tangible property . . . principally used by the taxpayer in the production of goods by manufacturing, processing . . . Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced."

The State Tax Commission hereby

DECIDES:

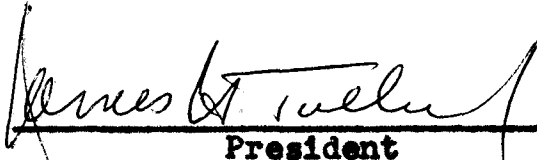
(A) The property at issue does not qualify for the investment tax credit since the taxpayer itself is not engaged in any processing of the raw milk. It merely weighs it for butterfat content, tests it for bacterial count, cools and agitates it to prevent the natural rising of the butterfat. The actual processing is done by others who purchase the raw milk from the taxpayer. Similarly, the property does not qualify under the storage portion of Section 210.12(b). The investment tax credit was intended as a tax incentive designed to induce the location in New York of new productive facilities, including certain storage components thereof. Storage facilities thus come within the scope of eligibility only if they are an integral part of a taxpayer's directly productive enterprise and not in their own right. Therefore, storage facilities owned by a mere intermediary between the source of raw material and the actual producer do not qualify.

(B) The notice of deficiency indicated at (2) is affirmed, together with interest in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 14th Day of August 1975.

STATE TAX COMMISSION



President



Commissioner



Commissioner